

Mr. ABRAHAM. The Senate Immigration bill included a somewhat different set of criteria for the release of criminal aliens prior to deportation, permitting release only for aliens who are cooperating with law enforcement authorities or for purposes of national security, in the Attorney General's sole and unreviewable discretion. Could you explain the purpose of this change?

Mr. HATCH. The conference report provision is intended to limit the conditions for release permitted in the Senate bill to those necessary to serve the purposes the Senate was trying to accomplish. The Senate provisions may have permitted releases under more circumstances than were truly necessary. To begin with, the conference report does not permit the release of criminal aliens for purposes of cooperating with law enforcement unless the alien has been accepted into the Witness Protection Program pursuant to section 3521 of title 18. Nor does the conference report permit the release of criminal aliens for purposes of national security, because it was difficult to imagine a circumstance in which the release of a convicted criminal would serve our national security interests—unless the criminal had been accepted into the Witness Protection Program.

Thus, I can assure the Senator from Michigan that the central purpose of the Senate amendments regarding mandatory detention—preventing the release of criminal aliens to further prey on American citizens—is furthered by the conference provision to an even greater degree than the Senate provision.

Mr. ABRAHAM. Finally, I have one more question for the distinguished Senator from Utah, regarding the changes made to eligibility of criminal aliens for waivers of deportation or exclusion under old section 212(c) of title 8, United States Code. The Anti-terrorism and Effective Death Penalty Act signed into law earlier this year, as well as the Senate Immigration bill, eliminated the possibility of 212(c) waivers for any criminal aliens who had committed any of several crimes that make aliens deportable under section 241 of title 8, United States Code. The conference report restores 212(c)-type waivers for criminal aliens who have not been convicted of aggravated felonies. Could you explain the purpose of this change?

Mr. HATCH. Let me say first of all that I share the Senator's concern with the procedural abuses under this country's immigration laws that have long been available to criminal aliens. The limitations on 212(c)-type eligibility for criminal aliens in the conference report, which appear in new section 240A(a), is intended to put an end to that. The reason the total bar on 212(c) review for criminal aliens in the Terrorism Act was revised to bar only aggravated felons was that, first, the definition of "aggravated felony" has been expanded to encompass most of the deportable crimes under old section 241,

for which 212(c) review was barred in the Terrorism Act. Second, there was some concern that there might be certain rare circumstances we had not contemplated, when removal of a particular criminal alien might not be appropriate. For example, an alien with one minor criminal conviction several decades ago, who has clearly reformed and led an exemplary life and made great contributions to this country, we believed ought to retain eligibility for a waiver of deportation or exclusion.

Mr. ABRAHAM. So, 212(c) relief—or new section 240A(a) relief—is intended only for highly unusual cases involving outstanding aliens such as the one you describe?

Mr. HATCH. That is correct. The extraordinary circumstances necessary for a grant of 212(c) relief should refer to the insignificance of the crime, and to substantial contributions to society made by the alien. To qualify for section 212(c) or analogous relief, despite the existence of a criminal conviction, an alien will have to show substantial benefits this country from granting the relief—not the potential hardship to the alien from not granting relief. I understand your concern that relief under this section will not be so limited, since it has not been so limited in practice in the past. We believed, however, that passage of the Anti-terrorism and Effective Death Penalty Act sufficiently demonstrated the Congress' serious concern about the abuse of section 212(c), that we could expect Immigration Judges to begin using their discretion under section 212(c) more judiciously. As you know, the Terrorism Act eliminated 212(c) relief for virtually any alien who had been convicted of any crime, including some misdemeanors. Several members believed that only by eliminating Immigration Judges' discretion to grant section 212(c) relief to criminal aliens altogether could we prevent section 212(c) from being used to grant relief too freely. The prevailing view was that the Terrorism Act sent a clear message that section 212(c) was being abused, and that Immigration Judges could be expected to respond to that message and take a hard look at 212(c) relief. The partial restoration of section 212(c) relief for aliens who have not committed aggravated felonies will test that theory.

Mr. ABRAHAM. That, of course, has been my concern. Section 212(c) relief was always intended to apply only to "those cases where extenuating circumstances clearly require such action"—as Congress put it when it enacted section 212(c) as part of the Immigration and Nationality Act in 1952. For the past 8 years, however, 212(c) relief has been granted to more than half of all who apply, the vast majority of whom are criminal aliens, amounting to thousands of criminal aliens per year.

Mr. HATCH. I agree with the Senator. Now that we have restored section 212(c) waivers for a small percent-

age of criminal aliens we expect Immigration Judges to use their discretion under this new section only in unusual cases involving exceptional immigrants whose criminal records consist only of minor crimes committed many years ago. We expect that to be the case under these new provisions.

Mr. ABRAHAM. If the limited restoration of section 212(c) relief does not include reasonable limitations on its use, I will be prepared to work with my colleagues to address that problem. Is my understanding correct that you too will pay close attention to how this provision is interpreted?

Mr. HATCH. Yes. I would also like to let the Senator from Michigan know how much I appreciate his commitment and dedication on this issue.

Mr. ABRAHAM. Thank you. I would likewise thank the Chairman of the Judiciary Committee for his diligent efforts on this issue in conference and his explanation of the conference report's provisions.

TRANSFER OF PERSONS FOUND NOT GUILTY BY REASON OF INSANITY

Mr. HATCH. Mr. President, I would like to make several brief comments regarding a provision included in the Economic Espionage Act passed yesterday. That legislation included an amendment I offered when this bill first passed the Senate to permit the transfer of Federal defendants found not guilty by reason of insanity from the inadequate facility of St. Elizabeths Hospital to the custody of the Attorney General.

Each of the approximately 26 inmates affected by this legislation were confined prior to the enactment of the Insanity Defense Reform Act of 1984. Since 1984, Federal inmates found not guilty by reason of insanity have been turned over to the custody of the Attorney General for appropriate treatment. This corrective legislation would extend this treatment to the pre-IDRA confinees.

St. Elizabeths Hospital is in a state of disrepair. According to press reports, the 70-year-old heating system is unreliable and can leave patients shivering in the cold during the winter months. The hospital staff is completely overwhelmed, and shortages of important antidepressant medicines have been reported by doctors.

These conditions should concern us all, and we should seek workable long-term solutions. But, we should deal promptly with current problems. What is particularly troubling is the lack of security at the facility, which is putting the public at risk. There are 26 Federal defendants in the hospital that may be a danger to themselves and others. Among these inmates is John Hinckley, Jr., who attempted to assassinate President Reagan in 1981.

According to the Department of Justice, there have already been three known escapes by these inmates in the

last 2 years. Fortunately, all of these inmates were recaptured, but not before one of them traveled to North Carolina and allegedly sexually molested two 3-year-old girls before he was found and returned to custody. Sadly, the hospital did not notify the Marshals Service, which is responsible for the security of these inmates, of a single escape.

St. Elizabeths Hospital apparently does not have the capability to provide adequately for the security or well-being of these 26 Federal defendants, even though the Federal Government pays \$450 per inmate per day, which works out to \$164,250 per inmate annually. It is time that the Federal Government take responsibility of these individuals for their own safety and the safety of the general public.

This bill transfers these 26 Federal defendants to the custody of the Attorney General. This will allow the defendants to be placed in appropriate Federal Bureau of Prisons medical facilities, for a fraction of the current cost, and to receive care appropriate to their conditions. The Justice Department has estimated that by transferring even half of the 26 patients to Federal medical facilities that the United States would save at least \$1.5 million annually.

The bill also requires that St. Elizabeth's Hospital provide to the Department of Justice the medical and treatment records for these inmates and bars the hospital from preventing doctors from discussing the inmates' treatment with Department of Justice officials. The hospital has been withholding the records, making it impossible for the Department—which is, after all responsible both for the inmates' well-being and for paying for their upkeep—to make effective decisions.

With respect to this records and access provision, I would like to briefly mention another related provision of this legislation. At the request of Senator LEAHY, we have included a provision clarifying the effect of the record and access provision on doctor-patient testimonial privileges.

This provision is intended to ensure that this legislation in no way alters the current state of the law regarding such testimonial privileges. Where these testimonial privileges currently exist, they will continue to have effect. Where they do not now apply, this legislation does not make them applicable.

I do not believe that any doctor-patient privilege is applicable to the treatment of the patients affected by this legislation. Indeed, it would be anomalous if, in a post-adjudication setting, such a privilege did exist. It would frustrate the ability of the government to provide appropriate care and treatment for these patients entrusted to the Government's care as a result of the adjudication.

Mr. President, this legislation provides for the safety and well-being of

the public and of affected patients in a fiscally responsible manner. I am pleased by its adoption by the Congress.

Mr. President, I ask unanimous consent that a letter from the Department of Justice endorsing this legislation be printed in the RECORD following my remarks.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, February 7, 1996.

Hon. ALBERT GORE,
President of the Senate,
U.S. Senate, Washington, DC.

DEAR MR. PRESIDENT: Enclosed for your review and appropriate reference is a draft bill, entitled the "Act to Improve the Treatment of and Security for Certain Persons Found Not Guilty by Reason of Insanity in the District of Columbia" ("Act"). A section by section analysis of the bill is also enclosed.

This legislation is intended to improve the treatment and security of approximately twenty-six persons who were found not guilty by reason of insanity in the District of Columbia, prior to the enactment of the Insanity Defense Reform Act of 1984 (IDRA). At present, these persons are committed to the custody of the District of Columbia's St. Elizabeths Hospital, although the United States remains financially responsible for them.

The Act would amend 18 U.S.C. § 4243 to establish constitutional procedures—in essence notice and an opportunity for a hearing for each individual person—under which the Attorney General could take custody of these persons. To foreclose constitutional concerns that might arise if the release conditions and procedures pertaining to such persons were changed, the Act makes a series of technical amendments to 18 U.S.C. § 4243 to ensure that these matters would continue to be governed by standards identical to those under the District of Columbia rather than IDRA.

The enactment of the bill would give the Justice Department the option of leaving this fairly small class of persons in St. Elizabeths, contracting with a state or private facility for their treatment in a secure setting, or placing them in a Bureau of Prisons medical facility. The Department would not have to handle all the persons the same way, but could pick and choose the best course of treatment for them individually, keeping in mind required security and public safety concerns.

The benefits of this legislation are threefold. First, the transfer of custody may allow for an improvement of medical and mental health care and treatment over that which is presently available at St. Elizabeths Hospital. Second, some patients have escaped from St. Elizabeths and engaged in criminal activity. These patients should be placed in more secure facilities. Third, the United States is presently incurring medical bills of \$450.00 per day for each of these inmates. Transfer of custody to a Federal medical facility would result in savings per patient of nearly \$120,000.00 per year. Even if only half of these patients were transferred to such a facility, the United States would realize annual savings of at least \$1.5 million.

The Act would require the District of Columbia and St. Elizabeths Hospital to provide the Attorney General access, within prescribed time limits, to medical records pertaining to the persons whose custody could be transferred to the Attorney General. This portion of the bill would resolve a pending suit the Department of Justice has

brought against the District of Columbia over these records. The District has refused the Department access to these records, despite the fact that the United States is financially responsible for the care and treatment of the persons to whom the records pertain at an annual cost of more than \$4 million. Access to these records, interviews with mental health professionals who have examined the persons to whom they pertain, and access to the patients themselves, are all important in enabling the Department of Justice to properly evaluate the condition of these patients before any transfer would be effected. The Act would prohibit the District of Columbia from preventing persons in its employ from providing such information to the Department of Justice or a contractor hired for this purpose, and would permit an interview with any patient who voluntarily consented to be interviewed.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this proposal to Congress.

I hope the bill will be promptly introduced, referred to the appropriate committee for consideration and enacted.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

INTERIOR APPROPRIATIONS

Mr. DOMENICI. Mr. President, I rise to engage the distinguished chairman of the Interior Appropriations Committee in a brief colloquy on the recently passed Omnibus Appropriations bill.

Mr. GORTON. I would be happy to engage my colleague in a colloquy.

Mr. DOMENICI. Mr. President, the recently passed months appropriations bill contains funding for many programs within the Department of Interior. It also includes funding for several programs administered by the Department of Energy [DOE]. I rise today to offer my support for continued funding for the DOE Office of Oil and Gas Technologies.

This program plays an important role in the technological aspects of oil and gas development. Moreover, this office plays a critical role in the international arena at a time when the world energy market is undergoing a substantial transformation. The move away from central planning and increased competition in many nations has presented unprecedented opportunities for U.S. companies with the expertise and experience in developing oil and gas production.

The fall of the Soviet Union and the gradual opening of markets in Latin America and Asia have unleashed significant potential for United States companies. For several decades, and some cases longer, oil and gas reserves have been almost entirely under State control. Only recently have these markets been open to outside investment.

Mr. GORTON. Would the Senator yield for a question?

Mr. DOMENICI. I would be happy to respond to the chairman of the subcommittee.

Mr. GORTON. If the opportunities exist for U.S. companies, what role does the Government play?